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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-1177

ALTON J. BAILEY, LEROY SMITH, and THE GENERAL LONGSHOREWORKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL UNION NO. 1830, PORT ALLEN, LOUISIANA

Petitioners

VERSUS

GEORGE DIXON, THOMAS W. GLEASON, RALPH MASSEY, MARK L. YOUNG, AND THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

Respondents

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Alton J. Bailey, Leroy Smith, and The General Longshoreworkers International Longshoremen's Association, Local Union No. 1830, Port Allen, Louisiana

versus

George Dixon, Thomas W. Gleason, Ralph Massey, Mark L. Young, and The International Longshoremen's Association

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REPLY BRIEF OF PETITIONERS

MAY IT PLEASE THE COURT:

In view of the erroneous statements and conclusions made by respondents in their brief in opposition to the petition for writ of certiorari, petitioners respectfully submit the following:

Respondents at page 3 of their brief mislead the court in stating that the ILA merely "received a petition containing charges against Bailey." The real facts are set forth at pages 7 and 9 of the petition for certiorari. On said pages it is stated that on March 3, 1969, only four days after Bailey's installation as president, a petition was dated and circulated for signing and that after receiving same, the ILA imposed trusteeship, and that the Fifth Circuit affirmed the trial court's decision that the trusteeship was invalid because no prior hearing had been held as required by the LMRDA. At page 9 of the petition it is stated that three days after the said Fifth Circuit decision, or on June 26, 1969, respondents again started trusteeship proceedings, this time purporting to comply with the fair hearing requirement by scheduling a so-called hearing on August 12, 1969. Therefore, the statement by respondents on page 3 of their brief is misleading and tends to omit the critical facts that there were <u>two</u> petitions containing <u>false</u> charges, the first of which was circulated only <u>four days</u> after Bailey took office, and the second of which was circulated only <u>three days</u> after the Fifth Circuit held the first trusteeship invalid for want of a full and fair hearing; the two petitions

did not include the same charges; the charging parties were political opponents of Bailey who Bailey had defeated in the election held in January-February, 1969, and respondent's brief attempts to overlook all of the facts which point to bad faith on the part of respondents from the inception of the first tursteeship and continuing throughout this controversy.

Respondents' brief is also misleading on page 4 with reference to the letter written by counsel for petitioners to Gleason. The letter, which is in evidence and is dated August 16, 1969, was written during the interim between the trial committee hearing on August 12, 1969, and the decision of the Executive Council on October 1, 1969, illegally placing the local in trusteeship contrary to the evidence received at the hearing. The letter, when considered as a whole and not in the piecemeal lifting-out-of-context manner as respondents have done in their brief, does not in any manner concede that the charges were proved against Bailey, that the hearing was full and fair, or that a lawful ground for trusteeship was proved before the ILA trial committee. The 546-page transcript of said hearing is the best evidence of its contents, and petitioners respectfully implore Your Honors to do what the ILA Executive Council and the two courts below failed to do; i.e., search the record for facts which would support a lawful trusteeship and not rely upon mere self-serving conclusions of the ILA's handpicked trial committee that "most of the charges against Bailey were sufficiently established" and that "it is the

opinion of this committee" that a lawful cause exists for the invoking of the drastic measure of trusteeship over the entire Local and removing all elected officers from office when only one officer, Bailey, was charged with any wrongdoing, and that was not proved.

Petitioners are not asking this Honorable Court to go against the rules announced in United States v. O'Donnell, 303 U.S. 501, and Allen v. Trust Company of Georgia, 326 U.S. 630. Petitioners are not asking Your Honors to retry the facts. Petitioners are, however, asking Your Honors to do what the courts below failed to do; namely, read the transcript of the trial committee hearing held on August 12, 1969 (Appendix H to the petition), and then decide whether, as a matter of law, there is substantial evidence to support imposition of trusteeship under the statutory criteria of Sec. 302 of the LMRDA, 29 U.S.C. 462. The crux of petitioners' argument is merely that there is no evidence to support the imposition of trusteeship, the ILA is acting in total bad faith, and the two courts below, because of their interpretation of the law as prohibiting substitution of judgment even where the union's actions were not supported by any evidence, have failed to search the record for evidence of a lawful cause for trusteeship and therefore are giving the labor unions across the country free rein to impose trusteeships at will and without being required to prove a legal ground for imposing same.

Respondents attempt to justify their position on page 16 of their brief by emphasizing a portion of the language from the House Labor Committee's Report on Trusteeships. However, this argument is weakened by two facts: 1) there is no honest decision herein, but rather one motivated by ill will and animosity toward Bailey and bad faith in general, and 2) the first eighteen (18) months of the trusteeship expired in March, 1971, and the presumption of validity no longer exists. Respondents would have Your Honors deny writs herein so that respondent ILA and other international unions could, through such "honest decision" and no-judicial-review tactics, use the trusteeship device at will to obtain or retain control of a particular local and thus write out of the LMRDA the remedial provisions for lawsuits in the U. S. District Courts contesting same in cases such as this where no ground for invoking trusteeship has been proven.

Finally, petitioners call the court's attention to the grossly misleading manner in which respondents have quoted from the report of the three-man ILA trial committee upon which the ILA Executive Council based its decision of October 1, 1969, to impose trusteeship over Local 1830. Beginning at the bottom of page 17 and continuing through the middle of page 22 of their brief, respondents quoted from the report and properly begin said quotation with the use of quotation marks at the beginning of the first paragraph only. Thereafter, only intermittently do respondents use quotation marks, and as a result, the reader is apt to be led into the false

belief that the quotation from the trial committee report is actually a statement of facts proved by the evidence either before the ILA trial committee on August 12, 1969, or before the District Court on December 17, 1969, which it is not. Such lifting out of context on the part of the trial committee in its report, and by the respondents in their brief, tends to give a false impression of the true nature of the August 12, 1969, trial committee hearing and the facts actually proved and disproved at same. And, since neither the District Court nor the Court of Appeals went behind the conclusions of the trial committee to examine into the lengthy record of the trial committee hearing, then petitioners respectfully request that Your Honors read the record, including Appendix H, the transcript of the ILA trial committee hearing, for the sole purpose of determining if a lawful cause, under Section 302 of the LMRDA, was proved.

Petitioners further ask:

If the international union is not required to prove a lawful cause for trusteeship, then why the fair hearing requirement of Section 304(c) of the LMRDA; 29 U.S.C. §464(c)? Why require a hearing if the hearing is not to determine if there is a need for the drastic sanction of trusteeship?

If the courts are without power to review the transcript of the hearing held before the imposition of trusteeship to determine if a lawful cause for same exists, then why the civil action for

enforcement provision of Section 304(a) of the LMRDA, 29 U.S.C. §464(a)? Why take the matter to court if the court's hands are tied and the court, even if it were to find that no ground for trusteeship exists, would be powerless to do anything about it?

Under the position taken by the Fifth Circuit herein, the substance of the hearing is not important, rather, it is the procedure only which controls. That is, the Fifth Circuit takes the position that if a so-called hearing is held, whether full or fair and whether or not it brings out evidence of a lawful cause for trusteeship under the LMRDA, the law has been complied with and the court will not look into the evidence.

Moreover, the Fifth Circuit takes the position that even if it did look into the evidence or lack of evidence brought out before the Union's trial committee, the court is powerless to reverse the Union tribunal and whatever the Union does is above judicial restraint.

Petitioners respectfully submit that the rule of judicial review which the Fifth Circuit has misapplied in this case is this: If there is contained in the record of the Union hearing substantial evidence to support the ultimate conclusions reached by that tribunal, then the courts' power of judicial review and power to substitute judgment is limited. With this rule petitioners do not quarrel. However, petitioners submit that this is

not the rule applied herein by the Fifth Circuit. The Fifth Circuit has, in effect, taken the position that regardless of the substance or sufficiency of the evidence produced at the trial committee hearing, the Union is free to impose trusteeship, and the courts, even if they disagree with the Union's decision, cannot substitute their judgment for that of the Union tribunal if there is any evidence to support the Union's ultimate conclusion to impose trusteeship. This has the undesirable result of giving International union officials free rein to file charges against a political opponent of their hand-picked Local officers, conduct a sham hearing, have one or two friendly Local members testify, even falsely, against the accused Local officer, and then impose trusteeship over the entire Local, whether the charges are proved or not and whether the charges, even if proved, would come within the ambit of Section 302 of the LMRDA, which enumerates the lawful causes for trusteeships. Thus, the Fifth Circuit has written out of the LMRDA the procedural and substantive due process protections of Local union members by opening the door to Internationals to oust duly elected officers and impose trusteeship at will and without a lawful cause, just so long as the form of a hearing is complied with.

Respondents, at page 25 of their brief, urge Your Honors not to read Appendix H, the transcript of the Union trial hearing, which in itself is an admission on their part that the transcript is unfavorable to their position. Respondents cite Barbour v. Sheet Metal Workers

International Assn., 401 F.2d 152 (6th Cir. 1968), and Vars v. International Bro. of Boilermakers, 215 F.Supp. 943, 949, aff'd. 320 F.2d 576 (2d Cir., 1963). Both cases are distinguishable, however.

The Barbour decision was written by Judge O'Sullivan, who also wrote the Fifth Circuit decision in the instant case, having been specially designated to sit on the panel hearing this case in the Fifth Circuit. In Barbour, Judge O'Sullivan contradicts himself by stating what he believed to be a rule of judicial review of Union trial committee findings and then violating his own rule. The case was one in which the plaintiff, Barbour, sought judicial review of a decision of the International Trial Board (Sheet Metal Workers) expelling him from the union. The Trial Board found him guilty as charged and expelled him; the District Court reversed; the Sixth Circuit, through Judge O'Sullivan, reversed the District Court. Judge O'Sullivan states on the second page of the opinion:

> "Neither the sufficiency of the evidence supporting the Board's findings nor the propriety or fairness of the hearing out of which they came is questioned here."

However, on the third page of the opinion, he states:

> "While it was not the function of the District Judge, nor is it ours on this appeal, to weigh the gravity of

> Barbour's conduct, as background, we set out the high points."

Thus, these two statements are inconsistent, and to compound the matter, the court then goes into the findings of the Trial Board and reviews in detail the evidence against Barbour, particularly with reference to the charge that he had libelled certain International officials. And, contrary to the rule as stated by him, Judge O'Sullivan then states:

> "* * *We are satisfied, however, that a fair reading of the testimony of the two Trial Board members /who testified under cross examination by counsel for Barbour/ does not support the inference that Barbour's libeling of the International officers was of importance in his expulsion * * *." 401 F.2d at 156

Therefore, although Judge O'Sullivan states in the Barbour decision the courts are not to review the union trial body's findings, he did so himself in the same case in which he said that courts should not do so. And, respondents rely upon such weak authority for the assertion that the ILA Trial Committee transcript (Appendix H) herein is not subject to judicial review.

Moreover, Judge O'Sullivan criticized the District Court for looking

into the "mental processes" of two of the members of the Trial Board, and yet Judge O'Sullivan himself then looked into the same "mental processes" of the same two members of the Trial Board in order to conclude that the two members did not consider the libel charge against Barbour in reaching the decision to expel him from the union.

Therefore, the Barbour case is of questionable authority for the proposition advanced by respondents that the courts cannot examine the evidence of Union trial bodies but rather are bound by same and cannot substitute judgment.

The Vars case, also, does not stand for the rule as stated by respondents on pages 25-26 of their brief. Again, respondents have quoted only a portion of the case, particularly that portion favorable to their side of the case. However, the entire rule of the Vars case is stated on pages 38-40 of the petition, the rule being that judicial review, while limited, is necessary and in fact it is "implicit in the requirement of a full and fair hearing"-that the hearing transcript be subjected to judicial scrutiny to determine if there is evidence to support the conclusion reached and to provide protection for individual union members "beseiged by the full power of the International Union." (See page 38 of petition)

Therefore, respondents have misstated the law by suggesting to Your Honors that the Barbour and Vars cases preclude judicial review of union trial committee

findings, thus showing bad faith on the part of respondents and a desire on their part that the transcript of the ILA Trial Committee hearing (Appendix H herein) held on August 12, 1969, not be read by Your Honors of the Supreme Court.

Finally, respondents on page 28 of their brief attempt to distinguish the cases of Schonfeld v. Raftery, 271 F.Supp. 128, affirmed, 381 F.2d 446 (2d Cir., 1967), and United Brotherhood of Carpenters and Joiners of America v. Brown, 343 F.2d 872 (10th Cir., 1965). However, both cases are analyzed fully by petitioners at pages 22-37 of the petition, and petitioners submit that said cases are authority for holding that trusteeships must be imposed in good faith for one of the lawful causes provided in Section 302 of the LMRDA, and that when the compainants, such as petitioners herein, can show by clear and convincing proof, as petitioners have done herein, that the trusteeship was imposed in bad faith and for an unlawful cause; namely, to settle a political dispute which would be better settled at the ballot box by democratic means, then the trusteeship should be set aside by the courts as invalid. Petitioners submit that it is incumbent upon the Federal Courts to closely scrutinize any attempt on the part of International unions to usurp the powers of Local unions, deny to the rank-and-file members their basic constitutional rights, and impose trusteeship under the guise of abiding by the LMRDA and the Union constitutions, but for the real motive of maintaining political control, and in cases where bad faith and clear abuses of the

superior International union power is shown, the courts are under a duty to review the evidence and thereupon substitute their judgment for that of the self-serving Union trial body. It is with this in mind that petitioners have petitioned Your Honors of the Supreme Court for a complete review of the decisions of the courts below and of the entire record herein, including the transcript of the Trial Committee Hearing, which is part of the record as Appendix H, and which, if respondents were in good faith, they too would urge Your Honors to read and consider.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I certify that I have this day mailed a copy of the foregoing Reply Brief of Petitioners to the following named persons:

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Baton Rouge, Louisiana, this the 10th day of May, 1972.

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